

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Jerry Lee Ausborn, Jr.,)	Civil Action No.: 6:18-cv-01969-JMC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Crystal Nicholls,)	
)	
Defendant.)	
)	
_____)	

Plaintiff brought this action seeking relief pursuant to 42 U.S.C. § 1983. This matter is before the court for a review of the Magistrate Judge’s Report and Recommendation (“Report”) (ECF No. 12), filed on August 14, 2018, recommending that this action be dismissed *with prejudice* and without issuance and service of process because Plaintiff failed to comply with the court’s order to file an amended complaint. The Report sets forth the relevant facts and legal standards, which this court incorporates herein without a recitation.

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

The parties were notified of their right to file objections. Neither party filed objections to

the Magistrate Judge's Report and Recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Instead, the court "must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

In this matter, Plaintiff alleged that Defendant directed racial slurs toward him, claiming a violation of his rights secured by the Constitution under 42 U.S.C. § 1983. However, Plaintiff failed to state a claim upon which relief may be granted under the statute. Because Plaintiff failed to state a claim, the Magistrate Judge ordered Plaintiff to file an amended complaint within a specified period of time. (ECF No. 7) Plaintiff failed to comply with the court's order to amend his complaint; therefore, the Magistrate Judge recommended that the action be dismissed *with prejudice*.

After a thorough and careful review of the record, the court finds the Magistrate Judge's Report provides an accurate summary of the facts and law in the instant case. The court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 12) and incorporates it herein by reference. For the reasons set out in the Report, it is therefore **ORDERED** that this action be dismissed *with prejudice* and without issuance and service of process for failure to state

a claim and for failure to amend the complaint as ordered by the Magistrate Judge.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

September 21, 2018
Columbia, South Carolina